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FILED

FEB 28 2022

DEPT. OF REAL ESTATE
By 

9 **BEFORE THE DEPARTMENT OF REAL ESTATE**
10 **STATE OF CALIFORNIA**

11 * * *

12 In the Matter of the Accusation against

No. H-42236 LA

13 **DIVIDENDS XIII CAPITAL;**

ACCUSATION

14 **ADRIAN LAVERNE BATES, as former**
15 **designated officer for Dividends XIII Capital;**

16 **and**

17 **TRACIE CAROLYN LOVE, as**
18 **designated officer for Dividends XIII Capital,**

19 **Respondents.**

20 The Complainant, Maria Suarez, acting in her official capacity as a Supervising
21 Special Investigator of the State of California, for cause of Accusation against **DIVIDENDS**
22 **XIII CAPITAL, ADRIAN LAVERNE BATES, as former designated officer for Dividends**
23 **XIII Capital, and TRACIE CAROLYN LOVE, as designated officer for Dividends XIII**
24 **Capital, (collectively "Respondents"), is informed and alleges as follows:**

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27 H-42236 LA: DRE Accusation against Dividends XIII Capital et al.

1. 1

2 All references to the "Code" are to the California Business and Professions
3 Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of
4 Regulations.

5 **DEPARTMENT OF REAL ESTATE LICENSE HISTORY**

6 **DIVIDENDS XIII CAPITAL**

7 3.

8 Respondent DIVIDENDS XIII CAPITAL ("DXC") is presently licensed and/or
9 has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate
10 broker (corporation) ("REC"), Department of Real Estate ("Department" or "DRE") license ID
11 01962875.

12 4.

13 According to DRE records to date, DXC was originally licensed by the DRE on
14 or about October 10, 2014. According to DRE records to date: DXC's main address of record
15 is 1230 Rosecrans Blvd., 3rd Fl., Hermosa Beach, CA 90254 ("Rosecrans address"), and its
16 mailing address of record is 11325 Glenoaks Blvd., Pacoima, CA 91331 ("Glenoaks address");
17 DXC's current designated officer ("D.O.") of record is TRACIE CAROLYN LOVE until her
18 officer expiration date of October 9, 2022; and DXC's previous D.O. was ADIAN LAVERNE
19 BATES, whose officer affiliation was cancelled as of August 13, 2020.

20 5.

21 According to DRE records to date, DXC is authorized to act by and through
22 TRACIE CAROLYN LOVE as its REB and designated officer of record ("D.O.") pursuant to
23 Code Section 10159.2, to be responsible for ensuring compliance with the Real Estate Law
24 until DXC's license expiration date on October 9, 2022. ADRIAN LAVERNE BATES was
25 DXC's previous D.O. until his officer affiliation was cancelled on August 13, 2020.
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6.

According to DRE records to date, DXC has no active DBAs, no branch offices, and no real estate salespersons ("RES") affiliated with its DRE license.

7.

According to DRE records to date, DXC's DRE license will expire on October 9, 2022.

ADRIAN LAVERNE BATES

8.

Respondent ADRIAN LAVERNE BATES ("BATES") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB, DRE license ID 00929036.

9.

According to DRE records to date, BATES was originally licensed by the DRE as a RES on or about May 30, 1986, and as a REB on or about January 17, 1991. According to DRE records to date, BATES' main address of record is 2603 Camino Ramon #200, San Ramon, CA 94583 and BATES' mailing address of record is 3870 Crenshaw Bl., #215, Los Angeles, CA 90008.

10.

According to DRE records to date, DXC was authorized to act by and through BATES as its REB and D.O. pursuant to Code Section 10159.2, to be responsible for ensuring compliance with the Real Estate Law until the officer affiliation cancellation on August 13, 2020.

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1 11.

2 According to DRE records to date, BATES has two (2) active DBAs, A-1
3 Realty and A-1 Realty Estate, both active as of October 19, 1995, and no branch office or RES
4 affiliations.

5 12.

6 According to DRE records to date, BATES is the REB and D.O. for A-1 Realty
7 & Associates, Inc. (DRE license ID 01940272) until March 3, 2022 and for Omega Omega
8 Omega Inc (DRE license ID 01251873) until November 3, 2023.

9 13.

10 According to DRE records to date, BATES is a broker associate for eXp Realty
11 of California, Inc. (DRE license ID 01878277).

12 14.

13 According to DRE records to date, BATES' DRE license will expire on January
14 16, 2023.

15 **TRACIE CAROLYN LOVE**

16 15.

17 Respondent TRACIE CAROLYN LOVE ("LOVE") is presently licensed and/or
18 has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB, DRE
19 license ID 01291515.

20 16.

21 According to DRE records to date, LOVE was originally licensed by the DRE
22 as a REB on or about January 15, 2019. According to DRE records to date, LOVE's mailing
23 address of record is DXC's Glenoaks address and LOVE's main address of record is similar to
24 DXC's Rosecrans address: 1230 Rosecrans Avenue, 3rd Floor, Manhattan Beach, CA 90266.

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17.

According to DRE records to date, DXC is authorized to act by and through BATES as its REB and D.O. pursuant to Code Section 10159.2, to be responsible for ensuring compliance with the Real Estate Law until the officer affiliation expiration on the same date as DXC's corporate license expiration, October 9, 2022.

18.

According to DRE records to date, LOVE has no active DBAs, and no branch office or RES affiliations.

19.

According to DRE records to date, LOVE's DRE license will expire on January 14, 2023.

Prior Discipline (Denial): DRE Case H-29144 LA

20.

According to DRE records to date, LOVE was denied a RES license on or about December 24, 2001 (DRE Case H-29144 LA).

DXC's REAL ESTATE ACTIVITIES

21.

At all times mentioned, in the State of California, DXC acted as a corporate REB (REC) and conducted licensed activities within the meaning of Code Section 10131¹

¹ Pursuant to Code Section 10131 Broker Defined, "A real estate broker within this meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity. (b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities. (c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government. (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business

1 and conducted broker-controlled escrows through its escrow division through the exemption
2 of California Financial Code Section 17006(a)(4),² with BATES, then LOVE, as its D.O.
3 and REB responsible for supervision of its activities which require a real estate license,
4 including, but not limited to activities performed by DXC's RES, officers, employees and
5 agents.

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17 opportunity. (e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property
18 sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business
19 opportunity, and performs services for the holders thereof."

20 ² Pursuant to Financial Code Section 17006: "(a) This division does not apply to: (1) Any person doing business
21 under any law of this state or the United States relating to banks, trust companies, building and loan or savings and
22 loan associations, credit unions, or insurance companies. (2) Any person licensed to practice law in California
23 who has a bona fide client relationship with a principal in a real estate or personal property transaction and who is
24 not actively engaged in the business of an escrow agent. (3) Any person whose principal business is that of
25 preparing abstracts or making searches of title that are used as a basis for the issuance of a policy of title insurance
26 by a company doing business under any law of this state relating to insurance companies. (4) Any broker licensed
27 by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in
which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a
real estate license is required. (b) The exemptions provided for in paragraphs (2) and (4) of subdivision (a) are
personal to the persons listed, and those persons shall not delegate any duties other than duties performed under
the direct supervision of those persons. Notwithstanding the provisions of this subdivision, the exemptions
provided for in paragraphs (2) and (4) of subdivision (a) are not available for any arrangement entered into for the
purpose of performing escrows for more than one business."

1 **DXC's CALIFORNIA SECRETARY OF STATE RECORDS**

2 22.

3 **Articles of Incorporation**

4 On or about March 28, 2014, DXC filed with the California Secretary of State
5 ("SOS") its Articles of Incorporation of a General Stock Corporation ("Articles"), corporation
6 ID 3661481. DXC's Articles named LOVE, located at the Glenoaks address, as its agent for
7 service of process, and LOVE signed said Articles as the Incorporator.

8 23.

9 **Statements of Information**

10 A. On or about June 15, 2020, DXC filed a Statement of Information ("June
11 2020 Statement") which listed the Glenoaks address as its principal office and mailing
12 address, and which listed 1230 Rosecrans Ave, 2nd Floor, Manhattan Beach, CA 90254 as its
13 principal executive office address. The June 2020 Statement declared DXC's business type as
14 "Real Estate Firm" and named LOVE as its Chief Executive Officer (CEO) and Secretary.
15 DXC's June 2020 Statement was electronically signed by LOVE.

16 B. On or about July 6, 2020, DXC filed its most recent Statement of
17 Information ("July 2020 Statement"), which declared DXC's business type as "Development
18 and Management Company," and removed LOVE as Secretary, but added LOVE as Director.
19 DXC's July 2020 Statement was electronically signed by LOVE.

20 24.

21 **Franchise Tax Board Suspension**

22 According to SOS records, the California Franchise Tax Board ("FTB")
23 suspended DXC's powers, rights and privileges on April 1, 2021, pursuant to the provisions of
24 the California Revenue and Taxation Code. According to the SOS Certificate of Status for
25 DXC dated January 15, 2022, DXC's powers, rights and privileges remain suspended.

1 a deductible, the employing broker shall have evidence of financial
2 responsibility that is sufficient to protect members of the public against
3 a loss subject to the deductible amount.

4 Evidence of financial responsibility shall include one or more of the
5 following:

6 (i) Separate fidelity bond coverage adequate to cover the amount
7 of the fidelity bond deductible.

8 (ii) A cash deposit held in a separate account, apart from other
9 funds of the broker, the broker's employees, or the broker's
10 principals, in a bank or recognized depository in this state
11 adequate to cover the amount of the fidelity bond deductible and
12 held exclusively and solely for the purpose of paying the fidelity
13 bond deductible amount.

14 (iii) Any other evidence of financial responsibility approved by
15 the commissioner.

16 (3) An arrangement under which a person enumerated in subparagraph
17 (A),(B), or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of
18 a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker
19 licensee, from responsibility or liability as provided by law in handling trust funds in the
20 broker's custody.

21 ...

22 (4)(b) A real estate broker acting as a principal pursuant to Section 10131.1³
23 shall place all funds received from others for the purchase of real property sales contracts or
24

25 ²Code Section 10131.1 states, "(a) A real state broker within the meaning of this part is also a person who engages
26 as a principal in the business of making loans or buying from, selling to, or exchanging with the public, real
property sales contracts or promissory notes secured directly or collaterally by liens on real property..."

1 promissory notes secured directly or collaterally by liens on real property in a neutral escrow
2 depository unless delivery of the contract or notes is made simultaneously with the receipt of
3 the purchase funds.

4 . . .

5 (4)(g) The broker shall maintain a separate record of the receipt and disposition
6 of all funds described in subdivisions (a) and (b), including any interest earned on the funds...”

7 26.

8 Pursuant to Regulation 2830 *Broker Placement of Trust Funds with Financial*
9 *Institutions:*

10 “The relationship between a real estate broker and a client for whom the broker
11 holds funds in trust is an agency relationship. As an agent, the broker owes a fiduciary duty to
12 the client regarding the handling of the trust. Any benefit received by the broker relating to the
13 broker's handling of client funds in trust belongs to the client by law, and the broker must pass
14 that benefit along to the client.

15 (a) Unless in possession of written permission from the client, it is unlawful for
16 any real estate broker, including any corporate broker, to receive, directly or indirectly, any
17 commission, compensation, or other consideration, whether personal or professional, from any
18 person or institution other than the client as an inducement for the placement of a trust fund
19 account in accordance with Section 10145 of the Business and Professions Code. Actual
20 placement of a trust fund account is not a precondition to a violation of this section, whether
21 the violation is or is not a per se violation pursuant to subsection (c), below.

22 (b) For purposes of this section, a “compensating balance” is a balance
23 maintained in a checking account or other account in a bank or other recognized depository in
24 the name of a real estate broker for the purpose of paying bank fees on a separate trust fund
25 account.

1 (c) Unless in possession of written permission from the client as described in
2 subsection (a), the following activities, whether performed directly or indirectly, are deemed
3 per se receipt of inducements for the placement of trust account business by any person and are
4 unlawful:

5 (1) Receiving or requesting payment for, accepting or requesting
6 provision of, or accepting or requesting assistance with business
7 expenses, including, but not limited to, rent, employee salaries,
8 furniture, copiers, facsimile machines, automobiles, telephone services
9 or equipment, or computers.

10 (2) Receiving or requesting receipt of any form of consideration
11 intended for the benefit of the broker, rather than the trust account itself,
12 including cash, below market rate loans, automobile charges, or
13 merchandise or merchandise credits.

14 (3) Receiving or requesting to receive on behalf of the broker or
15 corporation, compensating balances or benefits in the pricing or fees for
16 the maintenance of a compensating balance account.

17 (4) Receiving or requesting provision of all, or any part, of the time or
18 productive effort of any employee of the bank or other recognized
19 depository for any service unrelated to the trust account.

20 (5) Receiving or requesting expenditures for food, beverages, and
21 entertainment.

22 (d) Receipt or request of receipt of the following are not deemed to be unlawful
23 or in violation of this section:

24 (1) Promotional items with a permanently affixed company logo of the
25 bank or other recognized depository with a value of not more than ten
26

1 dollars (\$10) each. "Promotional item" does not include a gift
2 certificate, gift card, or other item that has a specific monetary value on
3 its face, or that may be exchanged for any other item having a specific
4 monetary value.

5 (2) Receipt or requested receipt of education or educational materials
6 exclusively related to the business of trust fund management if
7 continuing education credits are not provided.

8 (e) The receipt or requested receipt of any form of consideration as an
9 inducement for the placement of a trust account not specifically set forth in this section shall
10 not be presumed lawful merely because it is not specifically prohibited."

11 27.

12 Pursuant to Regulation 2832 *Trust Fund Handling*:

13 "(a) Compliance with Section 10145 of the Code requires that the broker place
14 funds accepted on behalf of another into the hands of the owner of the funds, into a neutral
15 escrow depository or into a trust fund account in the name of the broker, or in a fictitious name
16 if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other
17 financial institution not later than three business days following receipt of the funds by the
18 broker or by the broker's salesperson.

19 (b) Except as expressly provided by subdivision (d) of Section 10145 of the
20 Code or by a regulation in this article, the account into which the trust funds are deposited shall
21 not be an interest-bearing account for which prior written notice can by law or regulation be
22 required by the financial institution as a condition to the withdrawal of funds.

23 (c) A check received from the offeror may be held uncashed by the broker until
24 acceptance of the offer if

1 (1) the check by its terms is not negotiable by the broker or if the offeror
2 has given written instructions that the check shall not be deposited nor
3 cashed until acceptance of the offer and

4 (2) the offeree is informed that the check is being so held before or at
5 the time the offer is presented for acceptance.

6 (d) In these circumstances if the offeror's check was held by the broker in
7 accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a
8 neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror
9 and offeree expressly so provide in writing, not later than three business days following
10 acceptance of the offer unless the broker receives written authorization from the offeree to
11 continue to hold the check.

12 (e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate
13 broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial
14 Code) when acting in the capacity of an escrow holder in a real estate purchase and sale,
15 exchange or loan transaction in which the broker is performing acts for which a real estate
16 license is required shall place all funds accepted on behalf of another into the hands of the
17 owner of the funds, into a neutral escrow depository or into a trust fund account in the name of
18 the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious
19 name, as trustee at a bank or other financial institution not later than the next business day
20 following receipt of the funds by the broker or by the broker's salesperson."

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28.

Pursuant to Regulation 2832.1 *Trust Fund Handling for Multiple Beneficiaries:*

“The written consent of every principal who is an owner of the funds in the account shall be obtained by a real estate broker prior to each disbursement if such a disbursement will reduce the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the broker to all owners of the funds.”

29.

Pursuant to Regulation 2950 *When Broker Handles Escrow:*

“The following acts in the handling of an escrow by a real estate broker exempted from the provisions of the Escrow Law (by Section 17006(a)(4) of the Financial Code) are prohibited and may be considered grounds for disciplinary action:

(a) Soliciting or accepting an escrow instruction (or amended or supplemental escrow instruction) containing any blank to be filled in after signing or initialing of such escrow instruction (or amended or supplemental escrow instruction).

(b) Permitting any person to make any addition to, deletion from, or alteration of an escrow instruction (or amended or supplemental escrow instruction) received by such licensee, unless such addition, deletion or alteration is signed or initialed by all persons who had signed or initialed such escrow instruction (or amended or supplemental escrow instruction) prior to such addition, deletion or alteration.

(c) Failing to deliver at the time of execution of any escrow instruction or amended or supplemental escrow instruction a copy thereof to all persons executing the same.

(d) Failing to maintain books, records and accounts in accordance with accepted principles of accounting and good business practice.

1 (e) Failing to maintain the office, place of books, records, accounts, safes, files,
2 and papers relating to such escrows freely accessible and available for audit, inspection and
3 examination by the commissioner.

4 (f) Failing to deposit all money received as an escrow agent and as part of an
5 escrow transaction in a bank, trust account, or escrow account on or before the close of the
6 next full working day after receipt thereof.

7 (g) Withdrawing or paying out any money deposited in such trustee account or
8 escrow account without the written instruction of the party or parties paying the money into
9 escrow.

10 (h) Failing to advise all parties in writing if he has knowledge that any licensee
11 acting as such in the transaction has any interest as a stockholder, officer, partner or owner of
12 the agency holding the escrow.

13 (i) Failing upon closing of an escrow transaction to render to each principal in
14 the transaction a written statement of all receipts and disbursements together with the name of
15 the person to whom any such disbursement is made.

16 (j) Delivering or recording any instrument which purportedly transfers a party's
17 title or interest in or to real property without first obtaining the written consent of that party to
18 the delivery or recording.”

19 30.

20 Pursuant to Regulation 2951 *Record Keeping and Funds Handling*:

21 “The provisions of Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2834 and 2835 of these
22 regulations shall apply to the handling of funds and the keeping of records by a real estate
23 broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial
24 Code) when acting in the capacity of an escrow holder in a real estate purchase and sale,
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1 exchange or loan transaction in which the broker is performing acts for which a real estate
2 license is required.”

3 **Retention of Records –Chargeable Audits – Cost Recovery –**

4 **Penalties for Unlawful Destruction of Records**

5 (Code Section 10148)

6 31.

7 Pursuant to Code Section 10148 *Retention of Records –Chargeable Audits –*
8 *Cost Recovery – Penalties for Unlawful Destruction of Records:*

9 “(a) A licensed real estate broker shall retain for three years copies of all
10 listings, deposit receipts, canceled checks, trust records, and other documents executed by him
11 or her or obtained by him or her in connection with any transactions for which a real estate
12 broker license is required. The retention period shall run from the date of the closing of the
13 transaction or from the date of the listing if the transaction is not consummated. After notice,
14 the books, accounts, and records shall be made available for examination, inspection, and
15 copying by the commissioner or his or her designated representative during regular business
16 hours; and shall, upon the appearance of sufficient cause, be subject to audit without further
17 notice, except that the audit shall not be harassing in nature. This subdivision shall not be
18 construed to require a licensed real estate broker to retain electronic messages of an ephemeral
19 nature, as described in subdivision (d) of Section 1624 of the Civil Code.

20 (b) The commissioner shall charge a real estate broker for the cost of any audit,
21 if the commissioner has found, in a final desist and refrain order issued under Section 10086 or
22 in a final decision following a disciplinary hearing held in accordance with Chapter 5
23 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code
24 that the broker has violated Section 10145 or a regulation or rule of the commissioner
25 interpreting Section 10145.

1 (c) If a broker fails to pay for the cost of an audit as described in subdivision (b)
2 within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the
3 broker's license or deny renewal of the broker's license. The suspension or denial shall remain
4 in effect until the cost is paid or until the broker's right to renew a license has expired.

5 (d) The commissioner may maintain an action for the recovery of the cost of an
6 audit in any court of competent jurisdiction. In determining the cost incurred by the
7 commissioner for an audit, the commissioner may use the estimated average hourly cost for all
8 persons performing audits of real estate brokers.

9 (e) The bureau may suspend or revoke the license of any real estate broker, real
10 estate salesperson, or corporation licensed as a real estate broker, if the real estate broker, real
11 estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a
12 real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books,
13 papers, writings, documents, or tangible objects that are required to be maintained by this
14 section or that have been sought in connection with an investigation, audit, or examination of a
15 real estate licensee by the commissioner.”

16 **Broker Supervision**

17 **(Code Section 10159.2 and Regulation 2725)**

18 32.

19 Pursuant to Code Section 10159.2 *Responsibility of Corporate Officer in*
20 *Charge:*

21 “(a) The officer designated by a corporate broker licensee pursuant to Section
22 10211 shall be responsible for the supervision and control of the activities conducted on behalf
23 of the corporation by its officers and employees as necessary to secure full compliance with the
24 provisions of this division, including the supervision of salespersons licensed to the
25 corporation in the performance of acts for which a real estate license is required.

1 (b) A corporate broker licensee that has procured additional licenses in
2 accordance with Section 10158 through officers other than the officer designated pursuant to
3 Section 10211 may, by appropriate resolution of its board of directors, assign supervisory
4 responsibility over salespersons licensed to the corporation to its broker-officers.

5 (c) A certified copy of any resolution of the board of directors assigning
6 supervisory responsibility over real estate salespersons licensed to the corporation shall be filed
7 with the Real Estate Commissioner within five days after the adoption or modification
8 thereof.”

9 33.

10 Pursuant to Regulation 2725 *Broker Supervision*:

11 “A broker shall exercise reasonable supervision over the activities of his or her
12 salespersons. Reasonable supervision includes, as appropriate, the establishment of policies,
13 rules, procedures and systems to review, oversee, inspect and manage:

14 (a) Transactions requiring a real estate license.

15 (b) Documents which may have a material effect upon the rights or obligations
16 of a party to the transaction.

17 (c) Filing, storage and maintenance of such documents.

18 (d) The handling of trust funds.

19 (e) Advertising of any service for which a license is required.

20 (f) Familiarizing salespersons with the requirements of federal and state laws
21 relating to the prohibition of discrimination.

22 (g) Regular and consistent reports of licensed activities of salespersons.

23 The form and extent of such policies, rules, procedures and systems shall take into
24 consideration the number of salespersons employed and the number and location of branch
25 offices. A broker shall establish a system for monitoring compliance with such policies, rules,
26

1 procedures and systems. A broker may use the services of brokers and salespersons to assist in
2 administering the provisions of this section so long as the broker does not relinquish overall
3 responsibility for supervision of the acts of salespersons licensed to the broker.”

4 **Salesperson and Broker Associate Retention and Termination,**

5 **Notice of Change of Broker**

6 **(Code Section 10161.8 and Regulation 2752)**

7 34.

8 Pursuant to Code Section 10161.8 *Salesperson and Broker Associate Retention*
9 *and Termination:*

10 “(a) The commissioner shall specify the manner in which a responsible broker
11 shall provide notice to the commissioner of an affiliation with a real estate licensee or by
12 which a real estate licensee shall provide notice of a change of address or affiliation.

13 (b) Whenever a responsible broker retains a real estate salesperson to conduct
14 activities requiring a license, the responsible broker shall notify the commissioner in a manner
15 specified by the commissioner.

16 (c) Whenever a responsible broker retains a real estate broker to conduct
17 activities requiring a license, the responsible broker shall provide notice to the commissioner
18 in a manner specified by the commissioner.

19 (d) Whenever an affiliation with a real estate licensee is terminated, the
20 responsible broker shall provide notice to the commissioner in a manner specified by the
21 commissioner.

22 (e) Whenever a real estate licensee acquires a business address different from
23 the address shown in the records maintained by the commissioner, the licensee shall notify the
24 commissioner in a manner specified by the commissioner.”

25 ///

Pursuant to Regulation 2752 *Notice of Change of Broker*:

“Whenever a real estate salesperson enters the employ of a real estate broker, or whenever a real estate broker enters into a written agreement to act in the capacity of a salesperson to another broker, the responsible broker shall notify the Commissioner of that fact within five days. This notification shall be given on a form prepared by the Bureau and shall be signed by the responsible broker and the salesperson or broker acting as a salesperson. The form of notification shall provide for the furnishing of at least the following information:

- (1) Name and business address of the responsible broker.
- (2) Mailing address of the salesperson or broker acting as a salesperson, if different from the responsible broker’s business address.
- (3) Date when the salesperson or broker acting as a salesperson entered a written employment or retention agreement with the responsible broker.
- (4) Certification by the salesperson that he or she has complied with the provisions of Section 10161.8(d) of the Business and Professions Code.
- (5) When a salesperson is entering employment or a retention agreement, the name and business address of the real estate broker to whom the salesperson was last licensed and the date of termination of that relationship.
- (6) When a salesperson is entering employment or a retention agreement, certification by the salesperson that the predecessor responsible broker has notice of the termination of the relationship.

As an acceptable alternative to (5) and (6) above, the form may be utilized by the predecessor responsible broker to give notice of the termination of the broker/salesperson contract relationship as required by Section 10161.8(b) of the Business and Professions Code if this notice is mailed to the Commissioner not more than ten days following such termination.

1 A responsible broker that is involved in a contract to employ or retain another broker to act in
2 the capacity of a salesperson must give notice of the termination of that broker/broker contract
3 relationship as required by Section 10161.8(b) of the Business and Professions Code by
4 mailing such notice to the Commissioner not more than ten days following such termination.”

5 **Grounds for Revocation or Suspension**

6 **(Code Section 10176, selected portions)**

7 36.

8 Pursuant to Code Section 10176 *Grounds for Revocation or Suspension*:

9 “The commissioner may, upon his or her own motion, and shall, upon the
10 verified complaint in writing of any person, investigate the actions of any person engaged in
11 the business or acting in the capacity of a real estate licensee within this state, and he or she
12 may temporarily suspend or permanently revoke a real estate licensee at any time where the
13 licensee, while a real estate licensee, in performing or attempting to perform any of the acts
14 within the scope of this chapter has been guilty of any of the following:

15 (a) Making any substantial misrepresentation.

16 ...

17 (e) Commingling with his or her own money or property the money or other
18 property of others which is received and held by him or her.

19 ...

20 (i) Any other conduct, whether of the same or of a different character than
21 specified in this section, which constitutes fraud or dishonest dealing...”

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1 guilty plea, the commissioner may suspend the license of a real estate
2 licensee upon the entry by the licensee of a guilty plea to any of the
3 crimes described in paragraph (1). If the guilty plea is withdrawn, the
4 suspension shall be rescinded and the license reinstated to its status prior
5 to the suspension. The department shall notify a person whose license is
6 subject to suspension pursuant to this paragraph of that person's right to
7 have the issue of the suspension heard in accordance with Section
8 10100.

9 (c) Knowingly authorized, directed, connived at, or aided in the
10 publication, advertisement, distribution, or circulation of a material false
11 statement or representation concerning their designation or certification
12 of special education, credential, trade organization membership, or
13 business, or concerning a business opportunity or a land or subdivision,
14 as defined in Chapter 1 (commencing with Section 11000) of Part 2,
15 offered for sale.

16 (d) Willfully disregarded or violated the Real Estate Law (Part 1
17 (commencing with Section 10000)) or Chapter 1 (commencing with
18 Section 11000) of Part 2 or the rules and regulations of the
19 commissioner for the administration and enforcement of the Real Estate
20 Law and Chapter 1 (commencing with Section 11000) of Part 2.

21 (e) Willfully used the term "realtor" or a trade name or insignia of
22 membership in a real estate organization of which the licensee is not a
23 member.

24 (f) Acted or conducted themselves in a manner that would have warranted
25 the denial of their application for a real estate license, or either had a
26

1 license denied or had a license issued by another agency of this state,
2 another state, or the federal government revoked, surrendered, or
3 suspended for acts that, if done by a real estate licensee, would be
4 grounds for the suspension or revocation of a California real estate
5 license, if the action of denial, revocation, surrender, or suspension by
6 the other agency or entity was taken only after giving the licensee or
7 applicant fair notice of the charges, an opportunity for a hearing, and
8 other due process protections comparable to the Administrative
9 Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter
10 4 (commencing with Section 11370), and Chapter 5 (commencing with
11 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
12 Code), and only upon an express finding of a violation of law by the
13 agency or entity.

14 (g) Demonstrated negligence or incompetence in performing an act for
15 which the officer, director, or person is required to hold a license.

16 (h) As a broker licensee, failed to exercise reasonable supervision over
17 the activities of that licensee's salespersons, or, as the officer designated
18 by a corporate broker licensee, failed to exercise reasonable supervision
19 and control of the activities of the corporation for which a real estate
20 license is required.

21 (i) Used their employment by a governmental agency in a capacity
22 giving access to records, other than public records, in a manner that
23 violates the confidential nature of the records.

1 (j) Engaged in any other conduct, whether of the same or of a different
2 character than specified in this section, that constitutes fraud or
3 dishonest dealing.

4 (k) Violated any of the terms, conditions, restrictions, and limitations
5 contained in an order granting a restricted license.

6 (l) (1) Solicited or induced the sale, lease, or listing for sale or lease of
7 residential property on the grounds, wholly or in part, of loss of value,
8 increase in crime, or decline of the quality of the schools due to the
9 present or prospective entry into the neighborhood of a person or
10 persons having a characteristic listed in subdivision (a) or (d) of Section
11 12955 of the Government Code, as those characteristics are defined in
12 Sections 12926 and 12926.1 of, subdivision (m) and paragraph (1) of
13 subdivision (p) of Section 12955 of, and Section 12955.2 of, the
14 Government Code.

15 (2) Notwithstanding paragraph (1), with respect to familial status,
16 paragraph (1) shall not be construed to apply to housing for older
17 persons, as defined in Section 12955.9 of the Government Code. With
18 respect to familial status, nothing in paragraph (1) shall be construed to
19 affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil
20 Code, relating to housing for senior citizens. Subdivision (d) of Section
21 51 and Section 4760 of the Civil Code and subdivisions (n), (o), and (p)
22 of Section 12955 of the Government Code shall apply to paragraph (1).

23 (m) Violated the Franchise Investment Law (Division 5 (commencing
24 with Section 31000) of Title 4 of the Corporations Code) or regulations
25 of the Commissioner of Business Oversight pertaining thereto.
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1 (n) Violated the Corporate Securities Law of 1968 (Division 1
2 (commencing with Section 25000) of Title 4 of the Corporations Code)
3 or the regulations of the Commissioner of Business Oversight pertaining
4 thereto.

5 (o) Failed to disclose to the buyer of real property, in a transaction in
6 which the licensee is an agent for the buyer, the nature and extent of a
7 licensee's direct or indirect ownership interest in that real property. The
8 direct or indirect ownership interest in the property by a person related
9 to the licensee by blood or marriage, by an entity in which the licensee
10 has an ownership interest, or by any other person with whom the
11 licensee has a special relationship shall be disclosed to the buyer.

12 (p) Violated Article 6 (commencing with Section 10237).

13 (q) Violated or failed to comply with Chapter 2 (commencing with
14 Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code,
15 relating to mortgages.

16 If a real estate broker that is a corporation has not done any of the foregoing acts, either
17 directly or through its employees, agents, officers, directors, or persons owning or controlling
18 10 percent or more of the corporation's stock, the commissioner may not deny the issuance or
19 delay the renewal of a real estate license to, or suspend or revoke the real estate license of, the
20 corporation, provided that any offending officer, director, or stockholder, who has done any of
21 the foregoing acts individually and not on behalf of the corporation, has been completely
22 disassociated from any affiliation or ownership in the corporation. A decision by the
23 commissioner to delay the renewal of a real estate license shall toll the expiration of that
24 license until the results of any pending disciplinary actions against that licensee are final, or
25 until the licensee voluntarily surrenders the licensee's license, whichever is earlier."

1 **Written Disclosure Statement**

2 **(Code Section 10240 and Regulation 2840)**

3 38.

4 Pursuant to Code Section 10240 *Written Disclosure Statement*:

5 “(a) Every real estate broker, upon acting within the meaning of subdivision
6 (d) of Section 10131, who negotiates a loan to be secured directly or collaterally by a lien on
7 real property shall, within three business days after receipt of a completed written loan
8 application or before the borrower becomes obligated on the note, whichever is earlier, cause
9 to be delivered to the borrower a statement in writing, containing all the information required
10 by Section 10241. It shall be personally signed by the borrower and by the real estate broker
11 negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan.
12 When so executed, an exact copy thereof shall be delivered to the borrower at the time of its
13 execution. The real estate broker negotiating the loan shall retain on file for a period of three
14 years a true and correct copy of the statement as signed by the borrower. No real estate
15 licensee shall permit the statement to be signed by a borrower if any information required by
16 Section 10241 is omitted.

17 (b) For the purposes of applying the provisions of this article, a real estate
18 broker is acting within the meaning of subdivision (d) of Section 10131 if he or she solicits
19 borrowers, or causes borrowers to be solicited, through express or implied representations
20 that the broker will act as an agent in arranging a loan, but in fact makes the loan to the
21 borrower from funds belonging to the broker.

22 (c) In a federally regulated residential mortgage loan transaction in which the
23 principal loan amount exceeds the principal loan levels set forth in Section 10245, a real
24 estate broker satisfies the requirements of this section if the borrower receives (1) a “good
25 faith estimate” that satisfies the requirements of the Real Estate Settlement Procedures Act of
26

1 1974 (12 U.S.C.A. 2601 et seq.), and that sets forth the broker's real estate license number
2 and a clear and conspicuous statement on the face of the document stating that the "good faith
3 estimate" does not constitute a loan commitment, (2) all applicable disclosures required by
4 the Truth in Lending Act (15 U.S.C.A. 1601 et seq.), and (3) if the loan contains a balloon
5 payment provision, the disclosure described in subdivision (h) of Section 10241, the balloon
6 disclosure required for that loan by Fannie Mae or Freddie Mac, or an alternative disclosure
7 determined by the commissioner to satisfy the requirements of the Truth in Lending Act.
8 Prior to becoming obligated on the loan the borrower shall acknowledge, in writing, receipt of
9 the "good faith estimate" and all applicable disclosures required by the Truth in Lending Act.
10 The real estate broker shall retain on file for a period of three years a true and correct copy of
11 the signed acknowledgment and a true and correct copy of the "good faith estimate" and all
12 applicable disclosures required by the Truth in Lending Act as acknowledged by the
13 borrower."

14 39

15 Pursuant to Regulation 2840 *Approved Borrower Disclosure Statements:*

16 "(a) The Commissioner shall publish and make available to interested persons
17 as official forms of the Bureau of Real Estate Forms RE 882 (Rev. 8/08) and RE 883 (Rev.
18 8/08) which are incorporated by reference. Forms RE 882 and RE 883 contain approved
19 format and content for the disclosure statement required by subdivision (a) of Section 10240
20 of the Code and Section 10241 of the Code. (b) The publication of the forms pursuant to
21 subdivision (a) hereof is for the purpose of aiding real estate licensees in providing the
22 disclosure of material information to prospective borrowers in a uniform and effective
23 manner. (c) A real estate broker must obtain the prior written approval of the Commissioner
24 if he/she wishes to use forms different than those referred to in (a). Forms that do not
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1 adequately provide the information required by the forms in subsection (a) above, as
2 appropriate, and in a format that is easily used by the Bureau will not be approved.”

3 **Certificate of Status, Qualification or Good Standing**

4 **(Regulation 2742)**

5 40.

6 Pursuant to Regulation 2742 *Certificate of Status, Qualification or Good*

7 *Standing:*

8 “(a) An applicant for an original broker license for a domestic corporation shall
9 submit with the application, a Certificate of Status (Domestic Corporation) executed by the
10 California Secretary of State not earlier than 30 days before the date of mailing or delivering
11 the application to the headquarters office of the Bureau. However, if the applicant is a domestic
12 corporation which filed its original Articles of Incorporation not earlier than six (6) months
13 before the date of mailing or delivering the application to the headquarters office of the
14 Bureau, Articles of Incorporation executed by the California Secretary of State may be
15 submitted instead of a Certificate of Status.

16 (b) An applicant for an original broker license for a foreign corporation shall
17 submit with the application, a Certificate of Qualification or a Certificate of Good Standing
18 (Foreign Corporation) executed by the California Secretary of State not earlier than 30 days
19 before the date of mailing or delivering the application to the headquarters office of the
20 Bureau.

21 (c) A corporation licensed under Section 10211 of the Code shall not engage in
22 the business of a real estate broker while not in good legal standing with the Office of the
23 Secretary of State.”

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43.

On November 30, 2021, the DRE completed its audit examination of the books and records of Respondent DXC pertaining to its REB escrow activities (Audit LA200117), which require a real estate license. The audit examination covered a period of time beginning on January 1, 2019 and ending on February 28, 2021 (“audit examination period” or “audit period”), during which DXC’s D.O. was BATES from January 1, 2019 to August 12, 2020 and LOVE from August 13, 2020 to the present. The field work on the audit examination period records was performed intermittently from March 2021 to October 2021.

44.

Although the DRE auditor attempted to examine DXC’s books and records relating to its real estate activities to determine whether DXC handled and accounted for trust funds and conducted its real estate activities in accordance with the Real Estate Law and the Commissioner’s Regulations, D.O. LOVE and former D.O. BATES did not provide the requested records for the DRE’s examination. The records that D.O. Love and former D.O. BATES did provide were examined and copied on a sample basis, where appropriate.

45.

The DRE audit was limited to DXC’s mortgage loan and broker escrow activities and covered the broker escrow transaction file 899087-TS for the subject property. The DRE auditor examined correspondence among D.O. LOVE and former D.O. BATES and D.O. LOVE’s attorney, and records that the DRE subpoenaed from RushMyFile, Inc (“RMF”), WFG National Title Company (“WFG”) and Wells Fargo Bank (“WFB”). The loan and broker escrow transaction records were requested from DXC, but no records were provided by DXC, LOVE or BATES for the audit; neither were the trust fund records for DXC’s bank account B/A 1 made available for audit.

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Business Activities

A. According to former D.O. BATES and D.O. LOVE and their respective written statements provided on March 24, 2021, DXC did not conduct real estate activities during the audit examination period and there were no trust accounts maintained for the handling of trust funds received and disbursed during the audit period.

B. Based on the records subpoenaed by the DRE from RMF, WFG, and WFB, during the audit period, DXC: maintained one (1) bank account in connection with its broker escrow activities; closed a minimum of one (1) broker escrow transaction; and acted as the Cooperating Broker for the related mortgage loan transaction during said period.

C. Based on the bank statements examined for B/A 1, identified and described in Paragraph 50 below, there were three (3) other transactions wherein DXC handled receipts and disbursements of trust funds received from other title companies.

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Bank Account

A. According to former D.O. BATES and D.O. LOVE, DXC did not handle trust funds during the audit period and did not maintain any trust accounts during said period. Also according to LOVE, DXC did not conduct any mortgage loan activity and there had not been any real estate activity conducted by DXC.

B. Based on the records submitted to the DRE, DXC conducted broker-escrow activity and the escrow officer was non-licensee Tina Smith. DXC closed a minimum of one (1) transaction during the audit period.

C. Based on the records subpoenaed by the DRE from WFB, trust funds from the title company were wired into a bank account ("B/A 1") in DXC's name held by LOVE:

B/A 1

* Bank: Wells Fargo Bank (WFB)

* Bank Address: P.O. Box 6995, Portland, OR 97228-6995

* Account Name: Dividends XIII Capital (per bank statements)

* Account Holder: Tracie C. Love (per Business Records Declaration signed by WFB representative that listed LOVE's personal information)

* Account No.: #####0602

* Signatures Required: (unknown; no signature card was provided for the audit)

Based on the activities reflected in B/A 1's bank statements, the bank account B/A 1 was used for DXC/LOVE's business and personal activities. B/A 1 was maintained for the receipts and disbursements of trust funds for multiple beneficiaries in connection with DXC's mortgage loan and broker escrow activities.

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- 1 D. During the course of the audit, the DRE's SI also served a *subpoena duces*
2 *tecum* on WFB to produce bank statements for DXC's B/A 1.
- 3 E. DXC did not provide its books and records for audit period January 1, 2019
4 to February 28, 2021 for examination. The auditor was unable to prepare
5 the bank reconciliation for B/A 1 in connection with DXC's broker escrow
6 activities; nor was the auditor able to verify the trust fund accountability and
7 balances as of audit cutoff date, February 28, 2021 (while LOVE was
8 DXC's D.O.).
- 9 F. DXC did not provide its books and records for audit period January 1, 2019
10 to February 28, 2021 for examination. The auditor was unable to prepare
11 the bank reconciliation for B/A 1 in connection with DXC's broker escrow
12 activities, nor verify the trust fund accountability and balances as of audit
13 cutoff date, August 12, 2020 (while BATES was DXC's D.O.).
- 14 G. The DRE auditor prepared the bank reconciliation for B/A 1 as of B/A 1's
15 bank statement cutoff date of December 31, 2019 in connection with DXC's
16 broker escrow activities, based on limited records made available for the
17 audit (including the subpoenaed records from WFB, RMF and WFG).
- 18 H. As of December 31, 2019, there was a minimum trust fund shortage of
19 <\$424,887.10> in B/A 1 in connection with DXC's broker escrow
20 activities, due to minimum unauthorized disbursements and conversion of
21 funds totaling <\$424,887.10>, in violation of **Code Section 10145 and**
22 **Regulations 2832.1, 2950(g) and 2951.**
- 23 I. Neither DXC nor former D.O. BATES provided evidence that the owners of
24 the trust funds had provided their written consent to allow DXC/BATES to
25 reduce the balance of the trust fund bank account B/A 1 to an amount less
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1 than the existing aggregate trust fund liabilities of DSC/BATES to all
2 owners of the funds, in violation of **Code Section 10145 and Regulations**
3 **2832.1, 2950(g) and 2951.**

4 53.

5 **Audit LA 200117 - Issue Two**

6 **Misrepresentation/Fraud or Dishonest Dealing**

7 (Code Sections 10176(a) and 10176(i);

8 **Handling of Trust Funds/ Commingling/Unauthorized Disbursements/Conversion of**
9 **Funds/When Broker Handles Escrow**

10 (Code Sections 10145, 10176(e), 10176(i) and Regulations 2832, 2950(g) and 2951);

11 **Handling of Trust Funds/When Broker Handles Escrow**

12 (Code Section 10145 and Regulations 2832 and 2951); and

13 **Retention of Records/When Broker Handles Escrow**

14 (Code Section 10148 and Regulation 2950(e))

15 **(D.O. LOVE and Former D.O. BATES, 1/1/19 to 8/12/20)**

16 Due to the fact that records were not provided for the audit examination by
17 DXC, D.O. LOVE and/or former D.O. BATES, the DRE auditor examined records submitted
18 to the DRE by Borrower and records subpoenaed from RMF, WFG and WFB in connection to
19 the subject property. The DRE auditor compared all final settlement statements and estimate
20 settlement statements provided by lender RMF to those provided by Borrower (that Borrower
21 received from DXC), and found discrepancies in commission fee amounts, broker escrow fee
22 amounts, payments to EBJT Investment Firm, differences in the balance due to the borrower
23 amounts, and differences in the dates listed on the documents. The DRE auditor found a
24 discrepancy of \$21,774.69 between the "Charges and Proceeds to Borrower" in the copy of the
25
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1 Estimate Settlement Statement dated March 19, 2019 that Borrower received from DXC and
 2 the copy of the Estimate Settlement Statement provided by lender RMF.

3 A. A comparison of the Estimate Settlement Statement and Final Settlement
 4 Statement that Borrower received from DXC for transaction File 899087-TS is as follows:

	<u>Final Settlement Statement provided to Borrower by DXC dated 3/22/19</u>	<u>Estimate Settlement Statement provided to Borrower by DXC dated 3/19/19</u>
5		
6		
7	Print Date	3/22/19 at 10:24 A.M. by Tina Smith
8	Settlement Date	3/21/19
9	Disbursement Date	3/22/19
10	Broker's Commission	RushMyFile, Inc: \$2,980.00
11	Coordinating Broker Origination Fee	DXC: \$2,980.00
12	Escrow Fee	The Dividends XIII Escrow Division: \$1,400.00
13	Messenger Fee	\$270.00
14	Misc Escrow Income Edoc Fee	The Dividends XIII Escrow Division: \$850.00
15	Miscellaneous	(1) Home owner's Insurance Premium - Paul Diaz Insurance Agency Inc.: \$517.90; (2) Repairs Hold Back to Beneficiary: \$30,000.00; and (3) Prepaid Mortgage to Beneficiary: \$9,377.34
16		(1) Home owner's Insurance Premium - Paul Diaz Insurance Agency Inc.: \$517.90; (2) Repairs Hold Back to Beneficiary: \$30,000; and (3) Prepaid Mortgage to Beneficiary: \$9,377.34
17		
18		
19	Balance "Due to the Borrower"	\$92,889.55
20		Debit: \$ 71,527.61 Credit: \$101,527.61

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1 B. Lender RMF produced records for transaction 899087-TS. According to a
 2 cover letter by RMF's D.O., Andrew Dioli (DRE license ID 01703746), the originating REB
 3 for this transaction was DXC, which submitted the borrower loan request, including escrow,
 4 title and appraisal to the company. RMF reviewed the funding opportunity and issued a
 5 conditional loan quote to the submitting REB with the terms and conditions under which a
 6 loan could be arranged. A comparison of the Estimate Settlement Statement and Final
 7 Settlement Statement that Lender RMF produced in response to the DRE's subpoena is as
 8 follows:

	<u>Final Settlement Statement</u> <u>dated 3/22/19</u>	<u>Estimate Settlement</u> <u>Statement dated 2/28/19</u>
9		
10	Print Date: 3/22/19 at 10:24 AM	2/22/19 at 8:24 A.M.
11	Settlement Date: 3/21/19	
12	Disbursement Date 3/22/19	
13	Broker's Commission RushMyFile, Inc: \$2,980.00	RushMyFile, Inc: \$2,980.00
14	Coordinating Broker DXC: \$2,980.00	DXC: \$2,980.00
15	Origination Fee	
16	Escrow Fee The Dividends XIII Escrow Division: \$1,400.00	The Dividends XIII Escrow Division: \$1,400.00
17	Messenger Fee \$270.00	\$270.00
18	Misc Escrow Income Edoc Fee The Dividends XIII Escrow Division: \$850.00	The Dividends XIII Escrow Division: \$850.00
19	Miscellaneous (1) Home owner's Insurance Premium - Paul Diaz Insurance Agency Inc.: \$517.90;	(1) Home owner's Insurance Premium - Paul Diaz Insurance Agency Inc.: \$517.90;
20	(2) Repairs Hold Back to Beneficiary: \$30,000.00; and	(2) Repairs Hold Back to Beneficiary: \$30,000; and
21	(3) Prepaid Mortgage to Beneficiary: \$9,377.34	(3) Prepaid Mortgage to Beneficiary: \$9,377.34
22	Balance "Due to the Borrower" \$92,889.55	Debit: \$ 93,302.30 Credit: \$149,000.00

23 C. Based on the final and estimated settlement statements submitted to the DRE
 24 by Borrower (as received by her from DXC) and the subpoenaed final and estimated settlement
 25 statements received from RMF, the estimated settlement statements differed in that the
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1 commission and escrow fee amounts were increased on the estimated statement dated 3/19/19
2 that Borrower received from DXC. Borrower provided the DRE to a copy of cashier's check
3 number 7167602606 dated 3/19/19 payable to Borrower in the amount of \$71,527.61; the
4 amount of \$71,527.61 matched the Estimate Settlement Statement provided to Borrower by
5 DXC dated 3/19/19, but not the Final Settlement Statement dated 3/22/19 from lender RMF.

6 D. The DRE auditor also examined records produced by WFB that were
7 responsive to the DRE's *subpoena duces tecum* for records relating to B/A 1 (Dividends XIII
8 – Escrow Division account number #####0602). Based on the subpoenaed bank records
9 received and the examination of the bank statements for B/A 1, the DRE auditor discovered
10 that:

- 11 1. the ending balance in B/A 1 as of March 11, 2019 was \$1,752.69;
- 12 2. on March 12, 2019, WFG wired \$145,980.37 of trust funds for
13 Borrower's escrow proceeds to B/A 1 for disbursement related to
14 Borrower's loan escrow;
- 15 3. on March 13, 2019, an online transfer of \$3,000.00 was made to
16 DXC's Business Market Rate Savings account number #####6509,
17 leaving the bank balance to \$144,698.06 on that date;
- 18 4. other disbursements for DXC's business and personal expenses were
19 further paid out of B/A 1 that were not related to Borrower's escrow
20 disbursements, including but not limited to a March 14, 2019 online
21 transfer in the amount of \$2,500.00 to EBJT Investment Firm LLC's (of
22 which LOVE is the "Organizer" per this organization's 10/9/19 Articles
23 of Organization) business checking account number #####8634;

Audit LA 200117 - Issue Three**(Code Sections 10176(a) and 10176(i)****(Former D.O. BATES, 1/1/19 to 8/12/20)**

During the course of the audit, former D.O. BATES and D.O. LOVE stated that DXC did not perform licensed real estate activities, including mortgage loans and broker escrow activities, during the audit period January 1, 2019 to February 28, 2021. Based on the documents submitted to the DRE and the records subpoenaed by the DRE, DXC acted as the loan agent/Cooperating Broker for Borrower, and DXC handled Borrower's escrow transaction File Number 899087-TS.

- A. Based on an examination of the limited records available for the mortgage loan and broker escrow file for transaction File number 899087-TS, former D.O. BATES and D.O. LOVE misrepresented to the DRE that DXC did not perform any mortgage loan and broker escrow activities during the audit period, in violation of **Code Sections 10176(a) and 10176(i)**.
- B. Based on the subpoenaed records provided by WFB for B/A 1, according to a "Business Records Declaration" signed by WFB's representation, the accountholder's name for B/A 1 is Tracie C. Love and D.O. LOVE's personal information is listed on the Declaration. No other records were provided to identify the title and signators to the account.
- C. Based on the records submitted to the DRE and the subpoenaed records provided by RMF, DXC misrepresented the amounts of the fees and charges to the parties in transaction number 899087-TS, as fees and charges appeared on Borrower's Estimated Settlement Statement (dated 3/19/19) that DXC provided to Borrower that did not match the Estimated Settlement

1 Statement (dated 2/28/18) from the lender, RMF. Based on the records
2 provided to the DRE, DXC made unauthorized disbursements based on
3 Borrower's Estimated Settlement Statement. The Estimate Settlement
4 Statement that DXC provided to Borrower differed from the Estimated
5 Settlement Statement from RMF in that DXC's Estimate Settlement
6 Statement reflected more fees to be paid out to the escrow division and
7 higher mortgage broker commission.

8 D. There was a discrepant amount of \$21,462.94 in the Subtotals (costs) of
9 Borrower's loan and <\$21,774.69> in the Proceeds Due to Borrower when
10 comparing the Estimated Settlement Statement provided to Borrower from
11 DXC against the RMF Estimated Settlement Statement.

12 E. Based on the records submitted to the DRE and the subpoenaed records
13 provided by RMF, there was a difference in the amount due to Borrower
14 according to RMF's records and the amount actually received by Borrower
15 from DXC. According to the Final Settlement Statement (dated 3/21/19)
16 from the subpoenaed records provided by RMF, the final proceeds due to
17 Borrower was \$92,889.55. However, according to a copy of cashier's check
18 number 7167602606 submitted to the DRE by Borrower, the total payment
19 received by Borrower was \$71,527.61.

20 F. During the course of the audit, D.O. LOVE and former D.O. BATES
21 provided written statements stating that DXC/BATES/LOVE did not
22 conduct broker escrow activities. Based on the records subpoenaed from
23 RMF, WFG and WFB, DXC conducted broker escrow activity during the
24 audit period.

1 G. The conduct, acts and/or omissions by DXC and BATES in their
2 misrepresentation to the DRE of its lack of broker escrow activities is a
3 violation of **Code Sections 10176(a) and 10176(i)**. The conduct, acts
4 and/or omissions by DXC and BATES in providing Borrower an Estimated
5 Settlement Statement that disbursed additional fees and charges different
6 from that enumerated by the lender RMF constitutes a violation of **Code**
7 **Sections 10176(a) and 10176(i)**.

8 55.

9 **Audit LA 200117 – Issue Four**

10 **Handling of Trust Funds/ Commingling/Unauthorized Disbursements/Conversion of**
11 **Funds/ When Broker Handles Escrow**
12 **(Code Sections 10145, 10176(e), and 10176(i) and Regulations 2832, 2950(g) and 2951)**
13 **(Former D.O. BATES, 1/1/19 to 8/12/20)**

14 During the audit period, DXC made unauthorized disbursements and converted
15 minimum trust funds in B/A 1 for approximately <\$424,887.10> as of December 31, 2019.
16 Based on DXC's bank statements for B/A 1, DXC used the trust funds deposited into B/A 1
17 for DXC's and LOVE's business, personal and other expenses. Trust funds were commingled
18 with DXC's broker funds in B/A 1 and not deposited into a trust account (see also Issue Two,
19 described in Paragraph 53), in violation of **Code Sections 10145, 10176(e), and 10176(i) and**
20 **Regulations 2832, 2950(g) and 2951**. The balance of B/A 1 was reduced to an amount that
21 was less than the amount of trust funds deposited into B/A 1.

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56.

Audit LA 200117 – Issue Five

Handling of Trust Funds/ Trust Fund Handling/ When Broker Handles Escrow

(Code Section 10145 and Regulations 2832 and 2951)

(Former D.O. BATES, 1/1/19 to 8/12/20)

During the audit period, based on the bank statements examined, trust funds related to escrow proceeds received were deposited into B/A 1. The bank account B/A 1 was not set up and designated as a trust account in the name of “Dividends XIII Capital” as trustee. Based on B/A 1 bank statements examined for the audit, the account B/A 1 was set up as “Dividends XIII Capital” (see also Issue Two, described in Paragraph 53), in violation of **Code Section 10145 and Regulations 2832 and 2951.**

57.

Audit LA 200117 – Issue Six

Undisclosed Compensation/ When Broker Handles Escrow

(Regulation 2950(i))

(Former D.O. BATES, 1/1/19 to 8/12/20)

During the audit period, DXC failed upon closing of an escrow transaction, to render to each principal in the transaction a written statement of all receipts and disbursements together with the name of the person to whom any such disbursement is made, in violation of **Regulation 2950(i)**. DXC withdrew additional funds and did not provide evidence that the owners had given their written authorization/instruction to allow DXC and former D.O. BATES to reduce the balance of the escrow trust funds (see also Issue Two, described in Paragraph 53). DXC did not provide for audit: Borrower’s transaction file, record of all trust funds received and disbursed (control record), separate record for each beneficiary or transaction, and any records of monthly reconciliation.

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58.

Audit LA 200117 – Issue Seven

**Salesperson and Broker Associate Retention and
Termination/Notice of Change of Broker**
(Code Section 10161.8 and Regulation 2752)
(Former D.O. BATES, 1/1/19 to 8/12/20)

DXC failed to notify the DRE of the employment of REB LOVE during the period January 1, 2019 to August 12, 2020, in violation of **Code Section 10161.8 and Regulation 2752**. Based on documents submitted and provided by RMF, LOVE was acting as a loan agent for Borrower in transaction 899087-TS. DXC was listed as the Cooperating Broker in transaction 899087-TS representing Borrower and RMF was the broker representing the private investor.

59.

Audit LA 200117 – Issue Eight

Written Disclosure Statement/ Approved Borrower Disclosure Statements

(Code Section 10240 and Regulation 2840)
(Former D.O. BATES, 1/1/19 to 8/12/20)

A. Based on documents submitted to the DRE by Borrower, an approved mortgage loan disclosure statement was not provided by DXC for the audit examination. There was no evidence that a disclosure containing any information required by Code Section 10241 and a statement stating that the good faith estimate loan estimate does not contain a loan commitment was provided to Borrower by DXC, in violation of **Code Section 10240 and Regulation 2840**.

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1 B. Based on documents submitted and provided by RMF responsive to the
2 DRE's *subpoena duces tecum*, LOVE was acting as a loan agent for Borrower. DXC was the
3 Cooperating Broker in transaction 899087-TS representing Borrower and RMF was the broker
4 representing the private investor.

5 C. DXC did not provide loan transaction file 899087-TS for Borrower for the
6 DRE audit.

7 60.

8 **Audit LA 200117 – Issue Nine**

9 **Retention of Records/ When Broker Handles Escrow**

10 **(Code Section 10148 and Regulation 2950(e))**

11 **(Former D.O. BATES, 1/1/19 to 8/12/20 and D.O. LOVE, effective 8/13/20)**

12 The books and records related to the mortgage loan and broker escrow activities
13 conducted by DXC were not made available for the DRE audit examination for the audit
14 examination period of January 1, 2019 to February 28, 2021, in violation of **Code Section**
15 **10148 and Regulation 2950(e)**). The DRE's examination of DXC's mortgage loan and
16 broker escrow activities were based on limited information from subpoenaed records produced
17 by RMF, WFG and WFB for B/A 1. DXC did not provide for examination for the audit period
18 from January 1, 2019 to February 28, 2020 the records related to its mortgage loan and broker
19 escrow activities, including the transaction file 899087-TS, bank records used for handling
20 trust funds, control and separate records for B/A 1, and the trust account reconciliations (see
21 also Issue Two, described in Paragraph 53).

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61.

Audit LA 200117 – Issue Ten

Responsibility of Corporate Officer in Charge/ Broker Supervision

(Code Section 10159.2 and Regulation 2725)

(Former D.O. BATES, 1/1/19 to 8/12/20)

Based on the DRE auditor's findings, as described above in Paragraphs 52 through 60 (Issues One through Ten of Audit LA200117), DXC's former D.O. BATES did not exercise reasonable supervision and control over the activities conducted by DXC's licensees and/or employees as necessary to secure full compliance with the real estate laws and regulations, in violation of **Code Section 10159.2 and Regulation 2725**. BATES did not establish policies, rules, procedures and systems to review, oversee, inspect, and manage transactions requiring a real estate license and the handling of trust funds.

62.

Additional Violations of the Real Estate Law

(Code Sections 10177(d), (g) and (h))

The overall conduct of Respondents is in violation of the Real Estate Law and constitutes cause for the suspension or revocation of the real estate licenses and license rights of:

A. BATES under the provisions of **Code Section 10177(d)** (for willful disregard of the Real Estate Law); **Code Section 10177(g)** (for negligence) and **Code Section 10177(h)** (failure to exercise reasonable supervision), and

B. LOVE under the provisions of **Code Section 10177(d)** (for willful disregard of the Real Estate Law) and **Code Section 10177(g)** (for negligence).

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondents **DIVIDENDS XIII CAPITAL, ADRIAN LAVERNE BATES, and TRACIE CAROLYN LOVE** under the Real Estate Law (Part 1 of vision 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law, and for costs of audit.

Dated at Los Angeles, California
this 28th day of February, 2022.

Maria Suarez

Maria Suarez
Supervising Special Investigator

cc: Dividends XIII Capital
Adrian Laverne Bates
Tracie Carolyn Love
Enforcement – D. Huang, M. Suarez
Audits – S. Tan, Jennifer Lin
Sacto.